

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DAVID DIMARCO,
Plaintiff,

DECISION & ORDER
16-CV-6588

v.

NATIONSTAR MORTGAGE, LLC,
Defendant.

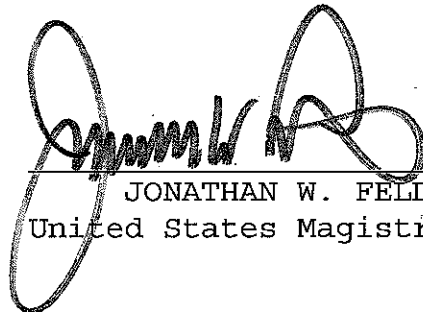
Plaintiff David Dimarco ("plaintiff") filed this action on August 23, 2016 (Complaint, Docket # 1), alleging that Nationstar Mortgage ("defendant") violated the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq. ("TCPA") by harassing him with debt-collection calls using "an automatic telephone dialing system and/or an artificial and/or prerecorded voice."¹ Amended Complaint, Docket # 11, at ¶ 55.

Currently pending before the Court is defendant's motion to stay the proceeding pending a decision in ACA International v. Federal Communications Commission, No. 15-122 (D.C. Cir. 2015). See Docket # 18. The appeal in ACA International concerns (1) the definition of an Automated Telephone Dialing System ("ATDS") under the TCPA and (2) the meaning of "consent" under the TCPA. The Court of Appeals for the District of Columbia Circuit heard oral argument in that case on October 19, 2016.

¹ The Amended Complaint also alleges a claim for violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. based largely on the same facts.

In a recent decision in this district, Judge Payson stayed a TCPA case that raised the same issues before the D.C. Circuit in ACA International, namely the definition of an ATDS and the meaning of consent. Reynolds v. Time Warner Cable, No. 16-cv-6165, 2017 WL 362025 (W.D.N.Y. Jan. 25, 2017). The instant case raises those same issues. For the reasons explained by Judge Payson in Reynolds, which the Court adopts here, defendant's motion to stay the proceedings (Docket # 18) is **granted**. Within seven (7) days of the issuance of the D.C. Circuit decision in ACA International, counsel shall request a scheduling conference from this Court.

IT IS SO ORDERED.



JONATHAN W. FELDMAN
United States Magistrate Judge

Dated: May 5, 2017
Rochester, New York